Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

DARRYL L. HOUGH -- PETITIONER

VS.

MARVIN T. RUNYON -- RESPONDENT
POSTMASTER GENERAL
U.S. POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
(ELEVENTH CIRCUIT) NO. 95-8940

PETITION FOR WRIT OF CERTIORARI

DARRYL L. HOUGH
2442 WOMACK CIRCLE
MILLEDGEVILLE, GA 31061
(912) 453-8280

27 pp

QUESTION(S) PRESENTED

1. Whether the Court of Appeals rendered a decision in conflict with decisions of this court, and of other Courts of Appeals when the court ruled that Petitioner's Appeal had no merit.

2. Was the Petitioner given a fair and impartial trial and appeal as guaranteed by the United States Constitution.

3. Did the United States Court of Appeals violate the Petitioner fundamental rights guaranteed in the United States Constitution to equal protection of the law and due process.

4. Did the Court of Appeals, Eleventh Circuit, have ample evidence in which to Affirm Petitioner's Appeal pursuant to the United States Laws (U.S.C.A.) And United States Constitution.

5. Did the Court of Appeals, Eleventh Circuit, violate the United States Code by stating that Petitioner has established no basis for his appeal.

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

APPENDIX A

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 18, 1996.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 23, 1996, and a copy of the order denying rehearing appears at Appendix "C".

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A- _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The United States Constitution guarantee of a fair and impartial trial, Equal Protection of the law, and Due Process of the law.

2. The State and Federal laws prohibiting discrimination.

3. The Federal laws and rules governing the standard to be applied to all United States citizens.

4. The Federal laws concerning Due Process of Appeal in which the United States Court of Appeals for The Eleventh Circuit is in conflict with the decisions of this court.

5. The Federal laws pertaining to testimony and evidence in the United States District Court for the Middle District of Georgia.

STATEMENT OF CASE

The instant Civil Action was filed in the United States court, Middle District of Georgia, on December 8, 1993. The complaint was filed by the Petitioner Darryl L. Hough v. Marvin T. Runyan, Postmaster General and Branch 1269, National Association of Letter Carrier, Respondent. The complaint filed in the Middle District of Georgia, Civil Action No. 93-415-3-MAC, arises under Title VII of the Civil Rights Act of 1964, as amended by 42 U.S.C. § 2000e - 2000e-16 and under the Constitution and laws of the United States.

The Petitioner is a black male, a seven year veteran employee of the United States Postal Service. Prior to the filing of this Complaint, Petitioner was involved in an altercation with another Letter Carrier (Bennie Veatch) during Petitioner's period of employment with the Postal Service. Following said altercation both Petitioner and Bennie Veatch were given notice of impending termination. Veatch, the white employee, was subsequently reinstated and Petitioner was subsequently removed from service. Petitioner, precedent to filing his action

in the U.S. District Court, filed his complaint of employment discrimination based upon his race (black) with both the Equal Employment Opportunity Commission (EEOC) and the U.S. Postal Service. After various attempts to settle his complaint informally, Petitioner requested a hearing before the Equal Employment Opportunity Commission (EEOC) and all appropriate agencies of the United States Postal Service.

The Southeast Area Office of Human Resources ultimately notified Petitioner of its final decision denying him his claim in a letter dated November 8, 1993. Following the receipt of said denial of his claim, Petitioner elected to bring this action for relief in the United States District for the Middle District of Georgia; Civil Action No. 93-415-3-MAC. The case was brought for trial with a non-jury before the Honorable Wilbur D. Owens, Jr., on June 27, 1995. After examination of the evidence and witnesses, the trial Judge ruled for the Respondent.

The Petitioner timely filed a Notice of Appeal and the case was transferred to the United States Court of Appeals Docket No. 95-8940 for judicial review of Federal questions presented herein.

The United States Court of Appeals notified Petitioner

denying his claim in a letter dated June 18, 1996. The Petitioner elected to bring his case before the SUPREME COURT OF THE UNITED STATES OF AMERICA for judicial review of Federal questions presented herein.

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully ask this court for a review to ensure that Petitioner's rights, equal protection of the law and Due Process of law under the United States Constitution are fairly applied. The United States Court of Appeals (11th Cir.) rendered a decision in conflict with decisions of this court, and of others Court of Appeals, when it ruled that Petitioner's Appeal had no merit. This Honorable Court has ruled that the United States Code and the United States Constitution must be applied equally to all United States citizens. The Petitioner is not claiming the United States laws are unconstitutional. But only ask that Petitioner's rights guaranteed in the United States Constitution be applied in a fair and judicial manner. The District Court did not apply the Petitioner's fundamental rights of the United States Constitution by denying a fair and impartial trial. The questions presented are substantial questions pursuant to the United States Constitution. The District Court and United States Court of Appeals have both denied the Petitioner Due Process of the law and Equal Protection of the law. The Petitioner reiterates that his fundamental rights guaranteed by the United States Constitution were violated.

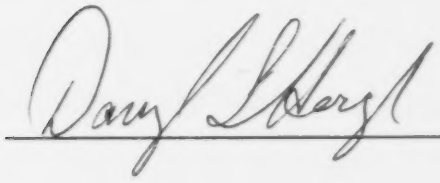
The substantial question presented on appeal and in this Petition have merit and these issues are the rights of the citizens of the United States of America and should be protected by the United States Constitution.*

The Petitioner prays that this Honorable Court would review the entire record. The Petitioner was discriminated against when the superiors of the United States Postal Service dismissed him from employment. The superiors applied a double standard and violated the Petitioner's Constitutional Rights. The District Court in ruling for the Respondent violated the Petitioner's United States Constitutional Rights. The United States Court of Appeals ignored the Petitioner's Due Process and Equal Protection of the Law by dismissing the appeal saying they find no merit. The Petitioner's entire case has merit because all the issues are protected by the United States Constitution. The Petitioner prays that the laws and the United States Constitution are applied equally in this case.

CONCLUSION

WHEREFORE, for the forgoing reasons and substantial questions concerning Constitutional Law the Petitioner prays that this Honorable Court the United States Supreme Court would grant the Petition for a writ of certiorari.

Respectfully Submitted,

 , Pro Se

Date: November 20, 1996

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 95-8940
Non-Argument Calendar

D.C. Docket No. 5:93-CV-415-3-WDO

DARRYL L. HOUGH,

Plaintiff-Appellant,

versus

MARVIN T. RUNYON, JR., POSTMASTER GENERAL, U.S. POSTAL SERVICE, in his official capacity as Postmaster General,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(June 18, 1996)

Before TJOFLAT, Chief Judge, EDMONDSON and BARKETT, Circuit Judges.

PER CURIAM:

We find no merit in this appeal and, accordingly, affirm. Contrary to appellant's argument, the district court had ample evidence before it on which to find that race discrimination was not the reason for appellant's dismissal. In that the court's fact finding on the issue is not clearly erroneous, we will not set it aside.

As for appellant's claim that the trial court inappropriately interfered with appellant's presentation of his case, we find no support for the claim in the record.[1]

In sum, appellant has established no basis for setting aside the district court's judgment.

AFFIRMED.

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[1]We do not consider appellant's challenge to the district court's finding that the postal union did not act in a discriminatory manner because appellant's claims against the union were dismissed without prejudice prior to trial. Nor do we consider appellant's statement in his reply brief that he received ineffective assistance of counsel. There is no right to the assistance of counsel. See Wahl v. McIver, 773 F.2nd 1169, 1174 (11th Cir. 1985).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DARRYL . HOUGH,	:	
Plaintiff,	:	
V.	:	*C.A. no. 5:93-CV-415-3 (WDO)*
MARVIN T. RUNYON, JR.,	:	
Defendant.		

JUDGMENT

Pursuant to the Order of this Court dated and filed June 28, 1995, and for the reasons stated therein, the court finds for the Postal Service on account of the absence of evidence of discrimination.

Judgement is hereby entered in favor of defendant.

This 28th day of June, 1995.

GREGORY J. LEONARD, CLERK

By:

Elaine W. Jones, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DARRYL L. HOUGH	:	
VS.	:	#5:93-cv-415-3 Mac (WDO)
MARVIN T. RUNYON, JR.	:	

O R D E R

Mr. Hough, there are two ways that cases like this can proceed. We can engage in a paper war where the Court goes back and writes up a lengthy dissertation and mails it to your lawyer and he mails it to you, and when you get through reading it, unless you're a lawyer, you probably won't understand it to start with. Or we can talk about it frankly while we're together. I think it would be fairer to you to discuss it while we are together

Now, to start with, the first thing you have to remember is that Congress has passed laws which prohibit racial discrimination and they have given

this Court the responsibility to enforce those laws. Those laws, however, do not give this Court the authority to merely secondguess the decisions that are made my employers. In other words, we are not here for this Court to question the wisdom of what the Postal Service did. We're not here for the Court to decide whether if it were the Postal Service, it would do the same thing the Postal Service did. The only thing this Court can do is determine whether or not there is evidence of racial discrimination in the decision that was made as to you.

Now, lawyers can't produce evidence. All they can do is take the evidence as it is found and produce it to the everything that he can put his hands on to the Court.

Now, the one item of evidence that is most persuasive as far as this Court is concerned is that the decisionmakers, preceding Mr. Jones, were of the opinion that both you and your fellow employee should be discharged from the Postal Service. They made every effort to treat both of you exactly alike. Now, Mr. Jones was not involved in the matter until your arbitration was concluded and there was an

about-to-be arbitration as to the other employee. There is no suggestion, there's no evidence to begin to indicate that when Mr. Jones decided in his best judgment to settle your fellow employee's case, that he did so because that employee was white where you were black. And without some evidence, there is not anything that this Court is empowered to do.

Discrimination must be proved, there must be evidence. The ultimate burden is upon you as the party who comes into Court complaining. And if the evidence is simply not there, there is nothing that the Court can do to remedy the situation.

So the Court has no choice under these circumstances but to find for the Postal Service on account of the absence of evidence of discrimination. But your lawyer did as good a job as can be done considering what the evidence was. So I hope you appreciate his valiant efforts under the circumstances.

SO ORDERED, this 28th day of June, 1995.

Wilbur D. Owens, Jr.
United States District Judge
Middle District of Georgia

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 95-8940

DARRYL L. HOUGH,

Plaintiff-Appellant,

verses

MARVIN T. RUNYON, JR., POSTMASTER GENERAL, U.S. POSTAL SERVICE, in his official capacity as Postmaster General,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Georgia

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion _____, 11th Cir., 19___, _____F.2d_____).

Before: TJOFLAT, Chief Judge, EDMONDSON and BARKETT, Circuit Judges.

PER CURIAM:

The petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CHIEF JUDGE

ORD-42
(6/95)